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09/659,502	09/11/2000	Monica R. Nassif	497.001US1	4893
<div>7590 04/20/2009</div> <div>Mark A Litman & Associates P A York Business Center Suite 205 3209 West 76th Street Edina, MN 55435</div>				
EXAMINER				
HUI, SAN MING R				
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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/659,502
Filing Date: September 11, 2000
Appellant(s): NASSIF ET AL.

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EXAMINER'S ANSWER

This is in response to the appeal brief filed December 17, 2008 appealing from the Office action mailed April 10, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,403,587

McCue

4-1995

Remington's Pharmaceutical Science, 18th ed., 1990, pages 1308, 1312, and 1314

(9) Grounds of Rejection

Upon reconsideration, emulsion is considered as one kind of solution (i.e., colloidal solution). Therefore, the rejection under 35 USC 112, second paragraph is withdrawn. It is clear from what the appellant's explanation, the instant invention is using a detergent, also known as surfactant or surface active agent, to form the emulsion of the two phases, i.e., oil (hydrophobic) and solvent – water or alcohol (hydrophilic). Such emulsion (as in the instant invention as well as in the cited prior art) could be considered as solution, as in macroscopical level, it is homogenous. Therefore, the rejection under 35 USC 112 is withdrawn.

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 31, 33-37, and 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,403,587 ('587, reference of record) in view of Remington's Pharmaceutical Science, 18th ed., 1990 page 1308, 1312, and 1314. Page 1314 of Remington was provided along with the previous office action mailed September 18, 2007.

'587 teaches a method of disinfecting hard surface with aqueous essential oils composition comprising alcohol, water, 075 – 10% of surfactant, and 0.2 weight percent of essential oil (See col.2, lines 20-24 and col. 3, lines 29-37). '587 also teaches the pH of the composition as 1-12 (See col. 4, lines 45-47). '587 also teaches the composition as useful to clean and disinfect hard surfaces such as countertops, tiles, etc. (See col. 6, lines 12-16).

'587 does not expressly teach the herein recited ranges of essential oil and long chain aliphatic alcohol. '298 does not expressly teach the surfactant as Tween 20, stearyl alcohol, or cetyl alcohol. '587 does not expressly teach the pH as 6.5-7.0.

Remington teaches that Tweens (polysorbate) as commonly use nonionic surfactant in pharmaceutical, cosmetics (See page 1314). Remington also teaches that stearyl alcohol and cetyl alcohol as commonly used surfactants useful in cosmetics or pharmaceuticals (See pages 1308 and 1312).

It would have been obvious to one of ordinary skill in the art at the time of invention to employ the herein claimed concentration of essential oil and long chain

aliphatic alcohol in the cleaning composition and the disinfecting method. It would have been obvious to one of ordinary skill in the art at the time of invention to employ the herein claimed pH in the cleaning composition and the disinfecting method. It would have been obvious to one of ordinary skill in the art at the time of invention to employ a nonionic surfactant Tween 20, stearyl alcohol, or cetyl alcohol, in the herein claimed dosage, in the cleaning composition and the disinfecting method.

One of ordinary skill in the art would have been motivated to employ the herein claimed concentration of essential oil and long chain aliphatic alcohol as well as the herein claimed pH of the composition in the cleaning composition and the disinfecting method. Since the concentration of essential oil and long chain aliphatic alcohol as well as the pH of the cleaning composition of '587 are overlapped with those of herein claimed, the optimization of these parameters would be considered obvious as being within the purview of skilled artisan, absent evidence with regard to the criticality of the herein claimed ranges.

One of ordinary skill in the art would have been motivated to employ a nonionic surfactant Tween 20, stearyl alcohol, or cetyl alcohol, in the herein claimed dosage, in the cleaning composition and the disinfecting method. It is known that various surfactants as useful in the composition of '587. Therefore, employing any well-known pharmaceutically and cosmetically acceptable surfactant, including Tween 20, stearyl alcohol, or cetyl alcohol, would be considered simply employing obvious alternatives, absent evidence to the criticality of employing Tween 20, stearyl alcohol, or cetyl alcohol, in the instant invention.

(10) Response to Argument

Appellant's arguments averring the cited prior art's failure to teach the composition as "solution" are not convincing. As discussed above, emulsion is one kind of solution. Secondly, and most importantly, the instant invention also employs detergent (surfactant) in the composition, which is the same as what the cited prior art teaches. The resulting composition is inevitably a form of colloidal solution or emulsion. Macroscopically, emulsion is homogenous. Therefore, in view of the teachings of the cited prior art, the claims are properly rejected under 35 USC 103(a).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/San-ming Hui/

Primary Examiner, Art Unit 1617

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